Luqman-Au Yong Sdn Bhd v Eye Bee Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D6–24–103 OF 2000
MOHD HISHAMUDIN J
23 APRIL 2003

Civil Procedure *— Striking out — Application to strike out action — Plaintiff applied for a review against decision of deputy registrar — Second defendant made an application to strike out the plaintiff's application — Whether the plaintiff's application could only be made after the deputy registrar had signed the certificate — Whether the second defendant's application to strike out the plaintiff's application was premature — Rules of the High Court 1980 O 59 r 36(2)*

Words and Phrases *— '... within 14 days, ...' — Whether there was a drafting omission in O 59 r 36(2) — Whether the words '... within 14 days, ...' was within 14 days of the date of the decision of the review or otherwise — Rules of the High Court 1980 O 59 r 36(2)*

The plaintiff made an application (encl 52) for a review against the decision of the learned deputy registrar ('the registrar') pursuant to O 59 rr 34 and 35 of Rules of the High Court 1980 ('the RHC'). The second defendant then made an application (encl 59) for the High Court's determination to strike out the plaintiff's application (encl 52) on the ground that the plaintiff's application was premature. It was contended by the second defendant that the plaintiff's application was premature because at the time the application to the judge was made, the registrar had yet to sign his certificate as required by O 59 r 35(3) of the RHC. The second defendant contended that the application to the judge under O 59 r 36(2) of the RHC could only be made after the registrar had signed the certificate pursuant to O 59 r 35(3) of the RHC. The issue for the determination of the court was whether encl 59, the second defendant's application to strike out the plaintiff's application (encl 52) was premature.

Held, dismissing encl 59 with costs:

The application by the second defendant to strike out encl 52 must be dismissed with costs. It was the view of the court that with respect to the drafters of the rule, there was a slight drafting omission in para (2) of r 36 of O 59 in that the sub-rule merely stated '... within 14 days, ...' without going on to state whether it was within 14 days of the date of the decision of the review or otherwise. But the court thought the words '... within 14 days, ...' must be interpreted to mean within 14 days of the registrar's decision on the review and not within 14 days of the signing of the registrar's certificate. Since the words '... 14 days, ...', meant within 14 days of the registrar's decision on the review, therefore, the court ruled that the second defendant's application was not premature. Enclosure 59 was misconceived (see p 494A, E).

[Bahasa Malaysia summary

Plaintif telah membuat satu permohonan (lampiran 52) untuk satu kajian semula terhadap keputusan timbalan pendaftar yang bijaksana ('pendaftar tersebut') menurut A 59 kk 34 dan 35 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Defendan kedua kemudian telah membuat satu permohonan (lampiran 59) untuk penentuan Mahkamah Tinggi untuk membatalkan permohonan (lampiran 52) atas alasan bahawa permohonan plaintif adalah pra masa. Ia telah ditegaskan oleh defendan kedua bahawa permohonan plaintif adalah pra masa kerana pada masa permohonan kepada hakim tersebut dibuat, pendaftar tersebut belum lagi menandatangani sijil beliau sebagaimana yang dikehendaki oleh A 59 k 35(3) KMT. Defendan kedua menegaskan bahawa permohonan kepada hakim tersebut di bawah A 59 k 36(2) KMT hanya boleh dibuat selepas pendaftar tersebut menandatangani sijil tersebut menurut A 59 k 35(3) KMT. Persoalan untuk ditentukan oleh mahkamah adalah sama ada lampiran 59, permohonan defendan kedua untuk membatalkan permohonan plaintif (lampiran 52) adalah pra masa.

Diputuskan, menolak lampiran 59 dengan kos:

Permohonan oleh defendan kedua untuk membatalkan lampiran 52 harus ditolak dengan kos. Mahkamah berpendapat bahawa berhubung penggubal kaedah tersebut, terdapat sedikit peninggalan penggubalan dalam perenggan (2) k 36 kepada A 59 di mana sub kaedah tersebut hanya menyatakan '... within 14 days, ...' tanpa menyatakan seterusnya sama ada ia adalah dalam tempoh 14 hari daripada keputusan kajian semula tersebut atau sebaliknya. Tetapi mahkamah berpendapat bahawa perkataan-perkataan '... within 14 days, ...' harus ditafsirkan untuk bermaksud dalam 14 hari daripada keputusan pendaftar tersebut tentang kajian semula tersebut dan bukan dalam tempoh 14 hari daripada sijil pendaftar tersebut ditandatangani. Memandangkan perkataan-perkataan '... 14 days, ...', bermaksud dalam tempoh 14 hari daripada keputusan pendaftar tersebut tentang kajian semula tersebut, oleh itu, mahkamah memutuskan bahawa permohonan defendan kedua tidaklah pra masa. Lampiran 59 telah disalah anggap (lihat ms 494A, E).]

Notes

For cases on application to strike out action, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) para 5617.

Cases referred to

Ho Wai Seng dan satu lagi v Johari bin Abas dan satu lagi [2001] 1 MLJ 558 (refd)

Legislation referred to

Rules of the High Court 1980 O 59 rr 34, 35(3), 36(2)

Raja Zurina (*Shaharudin Sham Sunder & Partners*) for the plaintiff.
V Ravindran (*Kumar Jaspal Quah & Aishah*) for the second defendant.

Mohd Hishamudin J: Enclosure 52 is an application by the plaintiff for a review by the judge of the decision of the learned deputy registrar ('the Registrar') on a matter regarding taxation.

The decision of the Registrar, which is the subject matter of encl 52, is the decision of the review made by him on 23 July 2002. The review made by him was pursuant to O 59 rr 34 and 35 of Rules of the High Court 1980 ('the RHC').

Enclosure 52 is made pursuant to O 59 r 36(2) of the RHC. It provides:

> (2) An application under this rule for review of the Registrar's decision in respect of any item may be made at any time within 14 days, or such longer time as the Registrar at the time when he signs the certificate or the Court at any time, may allow.

The application that is now before me for my determination is encl 59, which is an application by the second defendant to strike out the plaintiff's application vide encl 52 on the ground that the plaintiff's application is premature. It is contended by the second defendant that the plaintiff's application is premature because at the time the application to the judge was made, the Registrar has yet to sign his certificate as required by O 59 r 35(3) of the RHC. The second defendant contends that the application to the judge under O 59 r 36(2) of the RHC can only be made after the Registrar has signed the certificate pursuant to O 59 r 35(3) of the RHC. Paragraph (3) of r 35 of O 59 provides:

> The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.
> A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar.'

The second defendant submits that the words '... within 14 days, ...' in O 59 r 36(2) of the RHC means within 14 days after the Registrar has signed the certificate. In support of his submission, learned counsel cites *Ho Wai Seng dan satu lagi v Johari bin Abas dan satu lagi* [2001] 1 MLJ 558.

In the case that is now for my consideration, it is not disputed that the decision of the Registrar on the review was made on 23 July 2002, that a request to the Registrar for the reasons of his decision pursuant to O 59 r 35(3) of the RHC has been made by the plaintiff on 5 August 2002 (and the reasons were given on 11 December 2002), that the application to the judge vide encl 52 was made within 14 days of that decision (that is, encl 52 was filed on 6 August 2002); and that at the time when the application to the judge was made, the Registrar has not yet signed his certificate as

required by O 59 r 35(3) of the RHC (the certificate was only signed on 11 December 2002). A

In my judgment, this application by the second defendant to strike out encl 52 must be dismissed with costs. True, the decision in *Ho Wai Seng* supports the second defendant's submission. But, with respect, I have a different opinion. In my view, with respect to the drafters of the rule, there is a slight drafting omission in para (2) of r 36 of O 59 in that the sub-rule merely states '... within 14 days, ...' without going on to state whether it is within 14 days of the date of the decision of the review or otherwise. But be that as it may I think the words '... within 14 days, ...' must be interpreted to mean within 14 days of the Registrar's decision on the review and not within 14 days of the signing of the Registrar's certificate. This is because the words '... within 14 days, ...' must be read in the context of the preceding words of para (2), namely: B C

> An application under this rule for review of the Registrar's decision...

In other words, the 14-day period must relate to the Registrar's decision on the review. With the greatest respect and in all humility, I wish to add here that the misunderstanding on the interpretation of para (2) of r 36 of O 59 would not have arisen if the drafters of the RHC had carefully drafted the sub-rule by adding after the words '... within 14 days ...', the words '... of the decision...' so that the relevant words of the sub-rule would read '... within 14 days of the decision,...'. D E

Since the words '... 14 days, ...', as I have hold, mean within 14 days of the Registrar's decision on the review, therefore, I rule that the second defendant's application is not premature. Hence, encl 59 is misconceived.

Enclosure 59 dismissed with costs.

Reported by Ezatul Zuria Azhari F

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